

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

**Application of SBC, Pursuant to Section)
271 of the Telecommunications Act of)
1996 for Authorization To Provide In-)
Region, InterLATA Services in Illinois,)
Indiana, Ohio, and Wisconsin)**

WC Docket No. 03-167

**Comments of the
Indiana Utility Regulatory Commission**

1. Introduction

On July 17, 2003, SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. (collectively "SBC") filed an application for authorization to provide in-region, interLATA service in the states of Illinois, Indiana, Ohio, and Wisconsin, pursuant to section 271 of the Communications Act of 1934, as amended (the 1996 Act), 47 U.S.C. § 271. Pursuant to section 271 of the Act, an applicant must demonstrate compliance with section 271 on a state-by-state basis.

The Indiana Utility Regulatory Commission (IURC or Commission) submits these comments and this report regarding SBC's request for authorization to provide in-region, interLATA service in Indiana. The Act permits SBC Indiana to enter the long distance phone business provided the company complies with a 14-point checklist designed to ensure that the company's actions do not inhibit the development of a competitive telecommunications market. In the IURC report, we conclude that SBC is largely in compliance, although we defer to the Federal Communications Commission (FCC) to ultimately determine whether local markets have

been fully and irreversibly open to competition, and that SBC has demonstrated sufficient accuracy of its systems data and wholesale billing reliability.

2. Discussion

The IURC has focused much of its time establishing and evaluating a record based on extensive and time-consuming third-party testing. The IURC approved the parties' recommendation to utilize Consultant John Kern to facilitate various collaborative workshops held to develop several of the components of SBC/Indiana's 271 application, such as OSS enhancements and upgrades, performance measurements, a master test plan for the third-party OSS test, and a performance assurance plan. On August 29, 2000, the IURC issued an order expressing concerns about a number of issues, primarily pertaining to the development of the Indiana Master Test Plan and the scope and methodology of the OSS test. The parties filed several Joint Progress Reports and other joint documents with the Commission setting forth certain agreements regarding upgrades to SBC's OSS, products and services SBC will offer, the process for revising the interim performance measures approved in Cause No. 41324¹, the choice of a third-party testing agent, choice of a pseudo-CLEC, the initial master test plan, dispute resolution, and change management and procedural issues, among other things. The Commission approved the parties' recommendation that KPMG (now BearingPoint) be the third-party tester. On March 19, 2001, the Commission issued an order approving (1) the initial Master Test Plan (version 1.0), (2) Statement of Work documents for both KPMG Consulting and the Hewlett-Packard Company, (3) the baseline performance measures,² (4) the SBC 13-state OSS interface change management plan for multi-state change management issues, and (5) the expanded role for the IURC staff that the parties had requested in their Corrected Joint Petition of March 14,

¹ Certain initial baseline performance measures for SBC Indiana were approved in Cause No. 41324 on February 16, 2000. In our July 10, 2000 docket entry in Cause Nos. 41657 and 41324, we postponed further consideration of SBC Indiana's "OSS performance measures and other unresolved OSS issues applicable to SBC Indiana" in Cause No. 41324 "to allow time for those issues to be decided in Cause No. 41657 or until further order of the Commission."

² The parties to Cause No. 41657 agreed, in collaborative workshops, to a number of modifications to the performance measures that had been developed in Cause No. 41324; they filed a "Joint Petition to Adopt Baseline Performance Measures" in this proceeding on December 27, 2000; a Joint Motion for Expedited Ruling and a "Joint Petition for Approval of Indiana Master Test Plan" on March 12; and a "Corrected Joint Petition for Approval of Master Test Plan" on March 14, 2001.

2001. Pursuant to all the Parties' request, the Commission also authorized KPMG Consulting to begin 3rd party testing in Indiana in this March 19, 2001 Order.

Subsequent to March 19, 2001, the Commission has issued additional orders and docket entries regarding performance measures³ and performance assurance/remedy plan issues.⁴ The Commission also issued further procedural orders and docket entries for this investigation. On October 31, 2002 the Commission issued a detailed Process Order that further defined the Commission's five minimum requirements for its Phase 2 investigation of Track A and the 14-point checklist. For example, this Process Order required SBC Indiana to file a comprehensive, detailed report indicating the arbitration agreement(s), tariff(s), or catalog that it will use to support its Section 271 application and to demonstrate compliance with applicable statutes, FCC and IURC orders and rules, and prior commitments that SBC Indiana has made. Finally, Phase 3, the Commission's review of the OSS test reports and SBC Indiana's actual performance results was delineated in a series of docket entries, including those dated: February 7, 2003, February 24, 2003, March 25, 2003, April 11, 2003, April 23, 2003 and May 9, 2003.

3. Summary

On the whole of the record for this proceeding established by the Order and Docket Entries discussed above, the Indiana Utility Regulatory Commission finds as follows:

SBC Indiana satisfies Section 271 (c)(1)(A) of the Telecommunications Act of 1996, to the extent the FCC determines that the uncertainty caused by SBC's challenges to our legal authority to order it to file a UNE tariff does not constitute or cause a lack of a

³ On June 16, 2001, the parties filed a "Corrected Joint Motion for Expedited Amendment of March 19, 2001, Order". The Commission's June 18 docket entry approved those changes. Additional changes were agreed to in the first six-month review, and the parties filed a "Joint Motion for Expedited Amendment of Prior Decisions" on October 10, 2001, seeking approval of certain additional changes agreed to in collaborative discussions – primarily reflecting the implementation of LSOG 4. The Commission approved the changes on January 30, 2002. In its October 16, 2002, Order in this Cause, the Commission imposed certain requirements on SBC Indiana for existing performance measure MI 15 and for proposed PM 124 and 124.1. These performance measures were discussed, and agreement was reached, in the recently concluded six-month review. A Joint Motion was filed on January 13, 2003, and an Amended Joint Motion was filed on February 21, 2003, seeking Commission approval of the agreed measures. That motion is now pending before the Commission. SBC Indiana informs that the agreed-upon changes have been implemented pursuant to agreement among the parties.

⁴ Cause No. 41657, Docket Entry (November 9, 2000); Order (Sept. 11, 2001); Docket Entry (July 12, 2002); Docket Entry (August 21, 2002) Order (October 16, 2002).

“concrete and specific legal obligation [by SBC] to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item”⁵ for certain UNEs and rate elements.

With respect to the provisions of Section 271 (c)(2)(B), our individual assessments as regard these many matters, indicate that SBC Indiana is in compliance with checklist items (1) through (14), except as noted in our report, and to the extent the FCC determines that the incomplete status of the BearingPoint Performance Audit (“PM Audit”), certain problems BearingPoint has discovered during the course of the PM Audit, and certain anomalies and inconsistencies in the three months of commercial results that SBC filed with the IURC for November and December, 2002, and January, 2003, do not call into question SBC’s having met the statutory nondiscrimination requirements and the FCC’s “meaningful opportunities to compete” requirements and do not affect or call into question the commercial results that SBC Indiana has filed with the FCC for a different set of three months. We have referred a number of issues to the FCC for resolution and enforcement, either because we could not reach a conclusion based upon the record before us or because, pursuant to Judge McKinney’s Remedy Plan decision, our authority is limited to order SBC Indiana to undertake corrective actions that it has not already agreed to undertake, or both.

Our review of the public interest shows that SBC Indiana’s requested authorization to provide in-region, interLATA services in Indiana is consistent with the public interest, convenience and necessity, assuming FCC action requiring SBC Indiana to correct certain billing, OSS, change management/JTE, performance measure and data problems discussed in this report, and FCC assistance in enforcing SBC’s successful implementation of those corrective actions and in ensuring that the underlying problems are actually corrected. The revised filing by SBC Indiana on August 1, 2003 complies with our July 2 Compliance Order. In lieu of the IURC ordered Remedy Plan, overturned as noted above, the Commission finds that “SBC Indiana Section 271 Remedy Plan” is adequate to satisfy the FCC’s requirements for a post-approval “performance assurance plan” in the context of Section 271, provided the FCC can provide

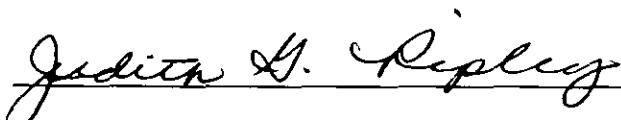
⁵ Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298), Para. 110 (Aug. 10, 1997)

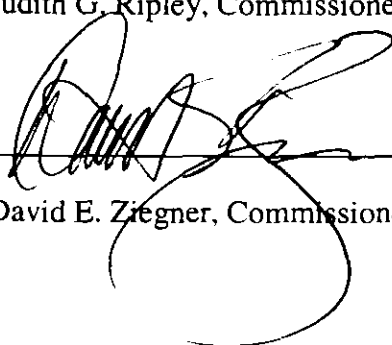
concrete, public assurances that it will assist the IURC in enforcing SBC's implementation of, and compliance with (1) that 271 remedy plan and (2) the compliance and improvement plans.

INDIANA UTILITY REGULATORY COMMISSION


William D. McCarty, Chairman


David W. Hadley, Commissioner


Judith G. Ripley, Commissioner


David E. Ziegner, Commissioner

Date: August 6, 2003